



# PUBLIC NOTICE

Federal Communications Commission  
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## AUCTION OF LOWER 700 MHz BAND LICENSES CLOSES Winning Bidders Announced for Auction No. 60

Down Payments due August 19, 2005  
FCC Forms 601 and 602 due August 19, 2005  
Final Payments due September 2, 2005  
*Ten-Day Petition to Deny Period*

### Report No. AUC-05-60-H (Auction No. 60)

On July 26, 2005, the Federal Communications Commission completed the auction for five Lower 700 MHz band C block (710-716/740-746 MHz) licenses (Auction No. 60), raising (in net bids) a total of \$305,155. In this auction, three winning bidders won a total of five licenses. This public notice provides detailed information concerning winning bidders, down payments, final payments and/or refunds, FCC Forms 601 and 602 filing requirements, requests for rule waivers, and licensing matters. Key information appears in the following attachments:

- Attachment A:** “Winning Bids” lists winning bidders and both their total gross and net winning bid amounts.
- Attachment B:** “Bidder Payment/Refund” lists any down payments and final payments owed by winning bidders, if any.
- Attachment C:** “Multi-Auction Withdrawal/Payment” lists amount(s) or refund(s) due for bidders in Auction No. 49 based upon reconciliation of final results of Auction No. 60.
- Attachment D:** “Instructions for Completing FCC Form 601 & FCC Form 602” provides detailed information about how a winning bidder should complete the required FCC Form 601 and FCC Form 602 for Lower 700 MHz band license applications.

A copy of this public notice will be sent via overnight delivery to each winning bidder.

### **A. Down Payments**

The Commission's rules require that within ten business days after the release of this public notice, in this case before **6:00 p.m. Eastern Time (ET) on August 19, 2005**, winning bidders in Auction No. 60 must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover 1) down payments on winning bids, and 2) payments for withdrawn bids, if applicable.<sup>1</sup> If a winning bidder's upfront payment is not sufficient to meet both of these requirements, the winning bidder must deposit additional funds.<sup>2</sup>

The amount now due from each winning bidder, if any, is set out in the "Additional Amount Due for Down Payment after Upfront Payment Balance Applied" column of **Attachment B**. **Note that a payment and FCC Form 159 are necessary only if a winning bidder's upfront payment does not cover the required total of down payments and withdrawn bid payments (as reflected in Attachment B)**. Each winning bidder's total deposits must be a total of any withdrawal payments (if applicable) plus twenty (20) percent of the net amount of its winning bid(s).

### **B. Final Payments**

Each winning bidder will be required to submit the balance of the net amount of its winning bids by September 2, 2005,<sup>3</sup> as set out in the "Refund or Final Balance Due" column of Attachment B. Licenses will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with Section 1.2109(a), and upon completion of the long-form applications (FCC Form 601) review.<sup>4</sup>

### **C. Method of Payment for Down and Final Payments**

All payments must be in U.S. dollars and made in the form of a wire transfer. No personal checks, credit card payments, or other forms of payment will be accepted. All payments must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159).<sup>5</sup>

Questions concerning the calculation and submission of down and final payments, the FCC Form 159, and refunds should be directed to Gail Glasser at (202) 418-0578.

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<sup>1</sup> See 47 C.F.R. § 1.2107(b).

<sup>2</sup> *Id.* In the event a bidder has withdrawn a bid(s) and is subject to a bid withdrawal payment(s), the bidder's upfront payment will be first applied to satisfy the withdrawal payment(s) before being applied toward its down payment. See 47 C.F.R. § 1.2104(g)(1).

<sup>3</sup> See 47 C.F.R. § 1.2109(a).

<sup>4</sup> 47 C.F.R. §§ 1.2107(c), 1.2109(a).

<sup>5</sup> Copies of the FCC Form 159 may be obtained by calling the Commission's Forms Distribution Center at 1-800-418-3676 (outside Washington, D.C.) or (202) 418-3676 (in the Washington D.C. area). Copies of the FCC Form 159 can also be obtained via the Internet (<http://www.fcc.gov/formpage.html>) or by calling the Commission's Fax Information System at (202) 418-2830.

To submit funds by wire transfer, winning bidders will need the following information:

ABA Routing Number: 043000261  
Receiving Bank: Mellon Pittsburgh  
500 Ross Street  
Pittsburgh, PA 15262  
BNF: FCC Account Number 911-6106  
OBI Field: (Skip one space between each information item) "AUCTIONPAY"  
APPLICANT'S FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)  
PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "A60D")  
FCC CODE 1: (same as FCC Form 159, Block 28A: "60")  
PAYOR NAME: (same as FCC Form 159, Block 2)  
LOCKBOX NO.: #358850

*1. Down Payment.* If applicable, a partially completed copy of the FCC Form 159 will be sent to winning bidders to facilitate submission of the correct **down** payment. Questions regarding FCC Form 159 should be addressed to Gail Glasser at (202) 418-0578. **Please note, however, that winning bidders are responsible for insuring submission of the correct down payment and obtaining confirmation from their financial institution that Mellon Bank has timely received their down payment and deposited it into the proper account.**

**Wire transfers for down payments must be received by Mellon Bank by 6:00 p.m. ET, on August 19, 2005.** Winning bidders should coordinate with their bankers ahead of time regarding their wire transfers, and allow sufficient time for the wire transfer to be **initiated and completed prior to the deadline.**

Winning bidders must fax the completed FCC Form 159 to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day). Proper completion of the FCC Form 159 is critical to ensuring correct credit of bidder deposits. **Winning bidders must use the same FCC Registration Number (FRN) used on their FCC Form 175.**

**Failure to complete the down payment on or before August 19, 2005, will result in default. See Section D.2., *infra*.**

*2. Final Payment.* If applicable, a partially completed copy of the FCC Form 159 will be sent to winning bidders to facilitate submission of the correct **final** payment. Questions regarding FCC Form 159 should be addressed to Gail Glasser at (202) 418-0578. **Please note, however, that winning bidders are responsible for insuring submission of the correct final payment and obtaining confirmation from their financial institution that Mellon Bank has timely received their final payment and deposited it in the proper account.**

**Wire transfers for final payments must be received by Mellon Bank no later than 6:00 p.m. ET on September 2, 2005** (or no later than 6:00 p.m. ET on September 19, 2005, along with the five percent late fee required by Section 1.2109(a) of the Commission's rules).<sup>6</sup> Applicants should coordinate with their bankers ahead of time regarding their wire transfers, and allow sufficient time for the wire transfer to be initiated and completed prior to the deadline.

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<sup>6</sup> 47 C.F.R. § 1.2109(a).

Payments must be preceded by the completed FCC Remittance Advice Form (FCC Form 159). The applicant must fax, on the same business day that it pays the balance due to Mellon Bank, a completed FCC Form 159 to Mellon Bank at (412) 209-6045 at least one hour prior to placing the order for the wire transfer. On the FCC Form 159, the applicant must use the same FRN used on its FCC Form 601.

**Failure to timely make the final payment on or before September 19, 2005 (along with the five percent late fee, if applicable), will result in default. See Section D.2., *infra*.**

#### **D. Withdrawal, Default and Disqualification Payments**

The Commission imposes payments on bidders that withdraw provisionally winning bids during the course of an auction, those that default on payments due after an auction closes, or those that are disqualified.<sup>7</sup>

*1. Bid Withdrawal Payments.* A bidder (Bidder X) that withdraws a provisionally winning bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid. If a provisionally winning bid is withdrawn on a license that remains unsold at the close of the auction, Bidder X will be required to make an interim payment equal to three (3) percent of the net amount of the withdrawn bid.<sup>8</sup> This payment amount is deducted from any upfront payments or down payments that Bidder X has deposited with the Commission. If, in a subsequent auction, that license receives a valid bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and upon appropriate request, the Commission will refund the interim three (3) percent payment. If, in a subsequent auction, the winning bid amount for that license is less than Bidder X's withdrawn bid amount, then Bidder X will be required to make a final bid withdrawal payment equal to either the difference between Bidder X's net withdrawn bid and the subsequent net winning bid, or the difference between Bidder X's gross withdrawn bid and the subsequent gross winning bid, whichever is less. The three (3) percent interim payment will be applied toward the withdrawal payment.

Now that Auction No. 60 is complete, we are in a position to calculate and assess final bid withdrawal payments owed as a result of withdrawals on licenses in Auction No. 49. These final bid withdrawal payments are identified in **Attachment C**. Any upfront payments or down payments that the withdrawing bidder has deposited with the Commission will first be applied to satisfy the withdrawal payment(s) amount before being applied towards a winning bidder's down payment.<sup>9</sup> Forthcoming orders will assess such payments.

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<sup>7</sup> See 47 C.F.R. §§ 1.2104(g), 1.2109.

<sup>8</sup> See 47 C.F.R. § 1.2104(g)(1); Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15301-02 (2000); see Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5563 n.51 (1994); see also Phase II 220 MHz Service Auction Closes, Winning Bidders in the Auction of 908 Phase II 220 MHz Service Licenses, *Public Notice*, 14 FCC Rcd 605 (1999).

<sup>9</sup> See 47 C.F.R. 1.2104(g)(1).

2. *Bid Default/Disqualification Payments.* If a provisionally winning bidder defaults or is disqualified after the close of the auction, the defaulting bidder will be subject to the same bid withdrawal payment obligations as described above, plus an additional payment equal to three (3) percent of the subsequent winning bid or three (3) percent of the defaulted bid, whichever is less. Where a bidding credit applies to the winning bid in either the original or the subsequent auction, the calculation of the three percent payment is based on the smaller of the two gross bids or smaller of the two net bids, whichever basis (gross or net) was used to figure the first component. Thus, if the difference between the gross bids is less than the difference between the net bids, the three percent payment will be computed on the lower of the gross bids. If the difference between the net bids is less than or equal to the difference between the gross bids, the three percent payment will be computed on the lower of the net bids. However, if both the difference between the gross bids and the difference between the net bids are less than or equal to zero, the three percent payment will be computed on the lower of the net bids.

If a winning bidder fails to remit the required down payment within ten (10) business days after the Commission has released this public notice, in this case by August 19, 2005, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for a default payment as described above. In such event, the Commission, at its discretion, may either auction the spectrum to existing or new applicants, or offer it to the other highest bidders (in descending order) at their final bids.<sup>10</sup>

If a winning bidder fails to pay the balance of its winning bids in a lump sum by September 2, 2005, it will be allowed to make payment within ten (10) business days after the payment deadline provided that it also pays a late fee equal to five (5) percent of the amount due. When a winning bidder fails to pay the balance of its winning bid plus the late fee by September 19, 2005, it is considered to be in default on its license(s) and subject to the applicable default payments.<sup>11</sup>

Licenses will be awarded only after the full and timely payment of winning bids and any applicable late fees,<sup>12</sup> and upon completion of the long-form applications (FCC Form 601) review. A winning bidder that is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the payment set forth in Section 1.2104(g)(2).<sup>13</sup> In such event, the Commission may either auction the spectrum to existing or new applicants or offer it to the other highest bidders (in descending order) at the amount of their final bids.<sup>14</sup>

Additionally, bidders that are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment, or full bid amount, and may be prohibited from participating in future auctions.<sup>15</sup>

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<sup>10</sup> See 47 C.F.R. § 1.2109(b).

<sup>11</sup> See 47 C.F.R. §§ 1.2104(g), 1.2109(c).

<sup>12</sup> See 47 C.F.R. § 1.2109(a).

<sup>13</sup> See 47 C.F.R. § 1.2104(g)(2).

<sup>14</sup> See 47 C.F.R. § 1.2109(c).

<sup>15</sup> See 47 C.F.R. § 1.2109(d).

#### **E. Refund of Excess Payments**

Upfront monies on deposit that are in excess of the required final payment, withdrawal and/or default payment amounts will be refunded to the payer of record as identified on FCC Form 159 promptly upon receipt of the necessary wire transfer instructions. Applicants can provide this information by accessing the “See Wire Transfer for Refund Purposes” link under the Post-Auction section of the My Auctions Page or by faxing such instructions to Gail Glasser of the Office of the Managing Director at (202) 418-2843. Any questions concerning refunds should be referred to Gail Glasser at (202) 418-0578.

#### **F. FCC Form 601**

By no later than **6:00 p.m. ET on August 19, 2005**, winning bidders must submit a completed long-form application(s) covering each license for which they were the winning bidder. **Attachment D** sets out instructions for completing the FCC Form 601. Applications **must** be filed electronically as instructed in **Attachment D**.

IMPORTANT: Beginning August 1, 2005, the online filing process changed for FCC Main Form 601, Application for Wireless Telecommunications Bureau Radio Service Authorization, including Schedule B for Geographically Licensed Services (the “long form”). Instructions for the new filing process, including information about the prefilling of the long form from FCC Form 175, are contained in Attachment D.

**Failure to timely file the required FCC Form 601 application(s) will result in default. Late-filed applications will not be accepted without a showing of good cause.**<sup>16</sup>

#### **G. Tribal Land Bidding Credit**

While the Commission has taken steps to encourage the growth of wireless services in federally recognized tribal lands by adopting a bidding credit program,<sup>17</sup> we note that there are no such lands within the geographic area covered by the licenses offered in this auction. Thus, tribal lands bidding credits will not be available to winning bidders in Auction No. 60.

#### **H. FCC Form 602**

Pursuant to sections 1.919 and 1.2107(f) of the Commission’s rules, an applicant for a license in an auctionable service must have on file with the Commission a current FCC Form 602 reporting the applicant’s complete and accurate ownership information.<sup>18</sup> Filing an FCC Form 602 is a **separate** requirement from, and in addition to, the ownership reporting requirements associated with filing FCC Form 601, Exhibit A, as set forth in **Attachment D**.

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<sup>16</sup> See 47 C.F.R. § 1.2107(c).

<sup>17</sup> See generally, *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Third Report and Order*, 19 FCC Rcd 17652 (2004); *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 4775, 4778-79 ¶ 10 (2003); *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 11794 (2000).

<sup>18</sup> 47 C.F.R. §§ 1.919, 1.2107(f).

Applicants are reminded that a current FCC Form 602 was automatically filed in ULS upon submission of their FCC Form 175. Thus applicants are not required to submit another FCC Form 602 at this time. However, applicants are encouraged to carefully review their FCC Form 602 in ULS to confirm that it is complete and accurate as of the deadline for filing FCC Form 602. For further information, see Instructions in **Attachment D**.

### **I. Maintaining Accuracy of Information**

After the auction closes, applicants are required to make all changes in the ULS system (Form 601). Applicants are no longer required to maintain accuracy and completeness of information furnished on their FCC Form 175 and exhibits.

### **J. Application Processing and License Grant**

Pursuant to 47 C.F.R. § 1.2108(b), interested parties will have ten (10) days to file petitions to deny after the Commission releases a public notice announcing the long-form (FCC Form 601) applications that are acceptable for filing.<sup>19</sup> An applicant may file an opposition to any petition to deny within five (5) business days after the time for filing petitions to deny has expired.<sup>20</sup> The petitioner may file a reply to such opposition within five (5) business days after the time for filing oppositions has expired.<sup>21</sup> After the long-form review process, if the Commission determines that additional payments from applicants may be required, the Bureau will provide further instructions in a future Public Notice regarding any such additional payments. If the Commission determines that an applicant is otherwise qualified, that there are no substantial and material issues of fact raised in any petition to deny, and that no additional payments are due, it will issue a public notice announcing grant of the license (or licenses) to the applicant.

*Frivolous Pleadings.* The Commission reminds parties to our proceedings and their attorneys that the Commission intends to use its authority fully to deter the filing of frivolous pleadings.<sup>22</sup>

### **K. Anti-collusion Rules**

To ensure the competitiveness of the auction process, the Commission's rules prohibit competing applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements, unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under section 1.2105(a)(2)(viii).<sup>23</sup> As explained more fully in the *Auction No. 60 Qualified Bidders Public Notice*,<sup>24</sup> this prohibition began at the short-form application filing deadline and ends at the down payment deadline,

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<sup>19</sup> 47 C.F.R. § 1.2108(b).

<sup>20</sup> 47 C.F.R. § 1.2108(c).

<sup>21</sup> *Id.*

<sup>22</sup> *See Commission Taking Tough Measures Against Frivolous Pleadings, Public Notice*, 11 FCC Rcd 3030 (1996).

<sup>23</sup> 47 C.F.R. § 1.2105(a)(2)(viii); 47 C.F.R. § 1.2105(c)(1). *See also Part 1 Seventh Report and Order*, 16 FCC Rcd 17546 (2001); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15297-98 ¶¶ 7-8.

<sup>24</sup> *See Auction of Lower 700 MHz Band Licenses; Five Bidders Qualified to Participate in Auction No. 60, Public Notice*, DA 05-1982 (July 13, 2005).

which is August 19, 2005.<sup>25</sup> The prohibition applies to all applicants in Auction No. 60 regardless of whether an applicant participated in the bidding, and the prohibition continues until the down payment deadline regardless of whether a winning bidder needs to make an additional payment by the down payment deadline. Applicants certified their compliance with Section 1.2105(c) when their FCC Form 175 short-form applications were signed.

**L. Return of SecurID Cards**

Bidders are encouraged to return their SecurID cards to the FCC by August 19, 2005, for recycling. The Commission will send bidders a copy of this public notice and a pre-addressed, stamped envelope. All bidders should use the envelope to return the cards now that the auction is over. Please note that each SecurID card is tailored to a specific auction, therefore, the cards issued for this auction will not work for future auctions.

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**For further information, contact**

News Media: Chelsea Fallon at (202) 418-7991

Technical Support Hotline: Technical Support Personnel at  
(877) 480-3201, option nine; (202) 414-1250;  
or (202) 414-1255 (text telephone (TTY))

Office of the Managing Director Gail Glasser at (202) 418-0578  
Auctions Accounting Group  
(Payment, FCC Form 159 and refund  
questions)

Wireless Telecommunications Bureau, JoAnn Epps, Industry Analyst, at (202) 418-1342  
Mobility Division Erin McGrath, Attorney, at (202) 418-0620  
(FCC Form 601 and 602 questions)

Wireless Telecommunications Bureau, Lisa Stover, Project Manager, at (717) 338-2888  
Auctions and Spectrum Access Division Howard Davenport, Attorney at (202) 418-0660  
(Auction-related questions)

To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

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<sup>25</sup> *Id.*